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11 UNITED STATES DISTRICT COURT  
12  
13 CENTRAL DISTRICT OF CALIFORNIA

14 L.A. PRINTEX INDUSTRIES, INC.,

15 Plaintiff,

16 vs.

17 TARGET CORP.; et al.,

18 Defendants.

Case No.: CV06-5179 RSWL (JCx)  
*Honorable Ronald S. W. Lew Presiding*

**PLAINTIFF'S REPLY IN SUPPORT  
OF ITS MOTION FOR SUMMARY  
ADJUDICATION; DECLARATION OF  
SCOTT A. BURROUGHS, ESQ. ;  
DECLARATION OF MOON G. JUNG**

Date: April 9, 2008  
Time: 9:00 a.m.  
Courtroom: 21-Spring Street

19  
20 **I. PLAINTIFF'S MOTION MUST BE GRANTED BECAUSE**  
21 **DEFENDANTS' OPPOSITION FAILS TO CREATE ANY TRIABLE**  
22 **ISSUE OF FACT**

23 Defendants' Opposition to the instant Motion failed to create any issue as to  
24 either the validity of Plaintiff's ownership of the design at issue ("Subject Design"),  
25 defendant Unicolors, Inc.'s access to the Subject Design, or the substantial similarity  
26 between the Subject Design and the infringing design used on the garments at issue.  
27 As such, Plaintiff has carried the burden necessary for this Motion to be granted.  
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1 In addition, no evidence whatsoever has been introduced to refute any of the  
 2 elements of Plaintiff's claims. A party opposing a Motion of this type must introduce  
 3 "sufficient" and "specific" facts to rebut Plaintiff's claims that no triable issue exists.  
 4 Triton Energy Corp. v. Square D. Co., 68 F.3d 1216, 1222 (9<sup>th</sup> Cir. 1995). In  
 5 opposition to the instant Motion, Defendants, at best, claim that no evidence exists to  
 6 support elements of Plaintiff's claim. This is done (a) when compelling evidence so  
 7 exists, and (b) when Defendants are in a position such that they should be introducing  
 8 evidence to refute Plaintiff's claims, not simply state that none exists to the contrary.<sup>1</sup>  
 9 This showing fails because it must be substantive, and a "scintilla of evidence or  
 10 evidence that is merely colorable or not significantly probative does not present a  
 11 genuine issue of material fact." Addisu v. Fred Meyer, Inc. 198 F. 3d 1130, 1134 (9<sup>th</sup>  
 12 Cir. 2000). As such, Defendants have failed to establish that any genuine issues exist,  
 13 and this Motion must be granted.

14 **A. All Evidence on Record Indicates that Plaintiff Owns the Subject**  
 15 **Design.**

16 Defendants' naked assertion that an issue exists in regard to the ownership of  
 17 the Subject Design is without merit; especially given that Defendants bear the burden  
 18 of refuting the prima facie presumption of ownership afforded to Plaintiff by virtue of  
 19 its United States copyright registration in the Subject Design. Entm't Research  
 20 Group, V. Genesis Creative Group, 122 F. 3d 1211, 1217 (9<sup>th</sup> Cir. 1997) (citing  
 21 Masquerade Novelty, Inc. v. Unique Indus., Inc. 912, F.2d 663, 668 (3<sup>rd</sup> Cir. 1990).  
 22 Defendants have failed to proffer any evidence whatsoever to rebut this presumption,  
 23 instead attempting to mislead the Court by referencing perceived, and irrelevant,  
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25 <sup>1</sup> To wit, at 8:22 of Defendants' Opposition, they state that because no evidence exists as to when  
 26 Plaintiff published the Subject Design, a "question of fact arises" as to which design was "published  
 27 first." This is false because (a) Plaintiff provided invoices showing its publishing of the Subject  
 28 Design and (b) no Declaration, copyright registration, or other evidence is proffered to refute  
 Plaintiff's statements and evidence in support of its publishing of the Subject Design. Due to this  
 lack of contradicting evidence, no triable issue exists, and this Motion must be granted.

1 technical errors allegedly made when Plaintiff filled out the registration form in 2003.

2 While it is disputable that the “errors” referenced by Defendants are even  
 3 errors at all<sup>2</sup>; assuming, arguendo, that they are, it is well-settled law in the 9<sup>th</sup> Circuit  
 4 that technical errors in a registration will not invalidate a registration. The law in the  
 5 Ninth Circuit is clear that, absent evidence of fraud on the Copyright Office, a  
 6 copyright will not be invalidated for an error or misstatement in the copyright  
 7 registration application. See Melville B. Nimmer, 3 Nimmer on Copyright § 7.20[B],  
 8 (citing Lamps Plus, Inc. v. Seattle Lighting Fixture Co., 345 F.3d 1140, 1145 (9<sup>th</sup> Cir.  
 9 2003); Cooling Sys. & Flexibles, Inc. v. Stuart Radiator, Inc. 777 F.2d 485, 487 (9<sup>th</sup>  
 10 Cir. 1985)) (“Simply stated, a misstatement or clerical error in the registration  
 11 application, if unaccompanied by fraud, should neither invalidate the copyright nor  
 12 render the registration certificate incapable of supporting an infringement action”);  
 13 See also Urantia Foundation v. Maaherra, 114 F.3d 955, 963 (9th Cir. 1997)(“The  
 14 case law is overwhelming that inadvertent mistakes on registration certificates do not  
 15 invalidate the copyright and thus do not bar infringement actions unless the alleged  
 16 infringer has relied to its detriment on the mistake.”)

17 Defendants point to perceived defects with the registration, but fail to make  
 18 any allegations of detrimental reliance, or any allegations that the Copyright Office  
 19 would have, or should have, denied the registration for the Subject Design. As such,  
 20 they categorically fail to create any triable issue of fact as to Plaintiff’s ownership of  
 21 the design. Id. (“Plaintiff’s failure to inform the copyright office of given facts is  
 22 **without substance** to the extent that the Office would have registered the subject  
 23 work even had it known those facts.”)(emphasis added), citing Russ Berry & Co. v.  
 24 Jerry Elsner Co., 482 F.Supp. 980 (S.D.N.Y. 1980); Masquerade Novelty, Inc. 912  
 25 F.2d at 667; Service & Training, Inc. v. Data Gen. Corp., 963 F.2d 680, 688-89 (4<sup>th</sup>

26 <sup>2</sup> It is not required to complete all sections of a copyright registration application. To wit, the  
 27 Copyright Office instruction in regard to Section 8 states, “**If** this application gives a date of  
 28 publication in space 3 [...],” (emphasis added), which necessarily implies that completion of said  
 section is voluntary.

1 Cir., 1992); Donald Frederick Evans & Assoc. v. Continental Homes, Inc., 785 F.2d  
2 897, 904 (11<sup>th</sup> Cir. 1986); Eckes v. Card Prices Update, 736 F.2d 859 (2<sup>nd</sup> Cir. 1984).

3 Defendants have not made these allegations because no detrimental reliance on  
4 the “errors” ever existed, and even if Plaintiff had filled-out the copyright registration  
5 as requested by Defendants, the same exact registration would have issued. An  
6 accused infringer can only rebut Plaintiff’s presumption by offering evidence that  
7 raises “serious questions” about the validity of the copyright. Entm’t Research  
8 Group, 122 F.3d 1218.

9 Defendants’ burden in rebutting the validity presumption depends on the  
10 element of ownership at issue; “[w]here, for example, the issue is whether the  
11 copyrighted article is ‘original,’ the presumption will not be overcome unless the  
12 defendant offers proof that the Plaintiff’s product was copied from other works or  
13 similarly probative evidence as to originality.” Masquerade Novelty, Inc., 912 F. 2d  
14 at 668. As no serious questions have been raised as to the validity of the copyright,  
15 Plaintiff has conclusively established its ownership of the Subject Design.

16 It does not appear that Defendants dispute that the design has been published,  
17 nor could they, given that “publishing” occurs upon sale and Plaintiff made dozens of  
18 sales of goods bearing the Subject Design, including sales to Unicolors [See  
19 Plaintiff’s Motion, Exhibit Six – Invoice for Unicolors Purchase of Product Bearing  
20 Subject Design]. For this same reason, there is also no dispute that the Subject Design  
21 was published in the United States. As the only requirement for publishing of a work  
22 is that it be published within five (5) years of the registration, there cannot possibly  
23 be a dispute as to this issue. 17 U.S.C. § 410(c). The documents evidencing  
24 Plaintiff’s sales of product bearing the Subject Design, which sales constitute  
25 publishing, conclusively establishes that Plaintiff published the work prior to the  
26 infringement. In addition, Plaintiff attaches as Exhibit Two, documents showing  
27 additional sales of product bearing the Subject Design. Given this evidence of the  
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1 sales, and publishing of the Subject Design, and the lack of any prior publishing by  
2 Defendants, summary judgment is appropriate.

3 The Documents attached as Exhibit Two are produced to refute the novel claim  
4 by Defendants that these documents do not exist and that Plaintiff did not “publish”  
5 the Subject Design. This claim is novel because these documents were duly provided  
6 in discovery and have never been challenged by Defendants. However, as a review of  
7 Exhibit Two reveals, this claim is false.

8 In addition, Defendants statement that the copyright registration “does not  
9 identify the author of the “Subject Design” not only does not create a dispute as to a  
10 material issue, but is downright false. A review of the certificate reveals that the  
11 author of the work is L.A. Printex, the Plaintiff in this action. Defendants do not  
12 contest the black-letter law that a corporation can be an author of a work, when that  
13 work was created by its employees.

14 Next, Defendants make the incomprehensible argument that Plaintiff’s  
15 application is somehow deficient because Section 2b of the certificate is blank. This  
16 section is to be completed when more than one person or entity is claiming  
17 authorship in a work. No such claim is being made here, or is being alleged by  
18 Defendants. Thus, Defendants are either attempting to confuse this Court in bad faith,  
19 or are confused about the proper completion of a Copyright application.

20 Finally, Defendants indicate that because the registration does not indicate on  
21 whose “authority” it was signed, it is somehow deficient. No authority is cited for this  
22 claim, because it is not a ground on which a registration may be invalidated. There is  
23 simply no dispute as to the validity of the registration, and, resultantly, there is no  
24 dispute as to Plaintiff’s ownership of the Subject Design.

25 In sum, Defendants have not produced even a scintilla of evidence that the  
26 design is not original, or is unable, for any reason, to be protected by copyright. Its  
27 only evidence is that it purchased fabric bearing the infringing design at a date **after**  
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1 Plaintiff published the Subject Design and **after** Plaintiff sold thousands of yards of  
2 fabric bearing the Subject Design to Unicolors. At the date of Unicolors purchase  
3 from the overseas vendor, it had had Plaintiff's design in its possession for over a  
4 year. Also, as indicated above, there is no Declaration from anyone at the overseas  
5 vendor, Dorim Corporation ("Dorim"), or any other evidence that it created or  
6 purchased rights in the design prior to Plaintiff's creation.

7 The only evidence on record is that Plaintiff created the Subject Design in  
8 2003 and began publishing it, at the very latest, in early 2004. As conceded by  
9 Defendants, its transaction with Dorim whereby they allegedly "received" the fabric  
10 with the infringing design, was not until May of 2005. This is the first evidence of  
11 any such sale of the design by Dorim. As such, the only evidence is that Plaintiff  
12 created and published the Subject Design over a year prior to the purchase of product  
13 bearing the infringing design from Dorim. There is no triable issue of fact on this  
14 point.

15 Based on the evidence presented, a jury could only reasonably conclude that  
16 Unicolors accessed Plaintiff's design, altered it, and asked Dorim to print fabric  
17 bearing this altered design. As such, there would be no sales by Dorim of fabric  
18 bearing the infringing design prior to the Unicolors transaction and it is clear, from  
19 the record, that Plaintiff's ownership of the Subject Design is beyond dispute.

20 Claiming that minor errors or omissions in a copyright registration certificate  
21 somehow defeats the certificate without citing any authority in support of these  
22 claims (because all authority is in direct contradiction to these claims) does not create  
23 a dispute sufficient to deny Plaintiff's Motion. Defendants have presented no  
24 evidence that Dorim Corporation, or anyone else, is the true owner of the Subject  
25 Design (or even claims prior use), that the Subject Design is not original, or that  
26 Plaintiff should not be entitled to protection in the Subject Design. The best they can  
27 do is to palely state that "it cannot be determined if LAP copied Dorim Corporation's  
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1 Design [...]” (Def. Opp. at 8:24-25). This does not come close to meeting the  
2 substantive and specific evidentiary standard necessary to rebut Plaintiff’s claims in  
3 regard to this Motion. As such, it must be granted.

4 **B. It Has Been Conclusively Established that Unicolors, Inc. had**  
5 **Access to the Subject Design.**

6 Plaintiff has proven, in satisfaction of the summary judgment standard, that  
7 Unicolors, Inc. (“Unicolors”) had access to the Subject Design. Initially, Plaintiff has  
8 produced an invoice for sales of fabric bearing the Subject Design to Unicolors. [See  
9 Exhibit Six to Plaintiff’s Motion - Invoice for Unicolors Purchase of Product Bearing  
10 Subject Design]. No evidence contradicting this purchase has been proffered by  
11 Defendants. The Declaration of the owner of Unicolors, Mr. Pazirandeh, does not  
12 dispute that (a) the invoice was issued in connection with Unicolors purchase of  
13 fabric printed with LAP’s design E50082, which is the Subject Design, (b) that  
14 Unicolors purchased and received the printed fabric referenced therein, or (c) that it  
15 purchased and received this printed fabric over a year before it bought fabric bearing  
16 a slightly modified version of the Subject Design from an overseas vendor (a vendor  
17 which would not require a certification of copyright ownership for a design).

18 The only issue it disputes is whether Unicolors received “samples” (which are  
19 small pieces of fabric bearing a copy of the design). This dispute is of no import  
20 given that the evidence on record shows a purchase of much more than samples.  
21 What the evidence shows is a purchase of actual product bearing the Subject Design,  
22 and there is no evidence or testimony to the contrary. From this it is clear that  
23 Unicolors accessed the Subject Design when it received thousands of yards of fabric  
24 bearing said.

25 Moreover, even if Plaintiff couldn’t show direct access by Unicolors to the  
26 Subject Design, it could establish that it widely disseminated the design, especially to  
27 the local market (in which Unicolors participates). Plaintiff has sampled the Subject  
28



1 Design to many companies in the local and national markets and has made sales of  
2 product bearing the Subject Design to numerous others. [See Exhibit B – Plaintiff’s  
3 Sales of Product Bearing Subject Design]. Unicolors, which has its facility a mere  
4 couple of blocks from Plaintiff’s facility, could easily have accessed the Subject  
5 Design through one of these intermediaries. Of course, with unrebutted proof that  
6 Unicolors purchased fabric bearing the Subject Design from Plaintiff, this second  
7 analysis should be unnecessary.

8 Even if access wasn’t established by Unicolors direct purchase of product  
9 bearing the Subject Design by Plaintiff, or the wide dissemination thereof, it is  
10 beyond dispute that Unicolors engaged in transactions with Dorim that included an  
11 illegally modified version of the Subject Design. A simple comparison of the two  
12 designs removes any possibility that the two designs were independently created.  
13 Also, notably, no declarations regarding creation or ownership by this overseas  
14 vendor have been produced, and no hard evidence of independent creation or  
15 ownership has been adduced. This is the case because no such testimony or evidence  
16 exists, as the design on the garments is, simply put, a rip-off of the Subject Design.

17 Finally, if two designs are so similar that it is impossible the infringing design  
18 was independently created, access may be assumed and infringement may be found  
19 on summary judgment. Three Boys Music Corp. v. Bolton, 212 F.3d 477, 485 (9th  
20 Cir. 2000), cert. denied, 531 U.S. 1126 (2000). The similarity between the works will  
21 satisfy this test if the works involved are sufficiently unique so as to make it  
22 “unlikely” that the designs were independently created. Selle v. Gibb, 741 F.2d 896,  
23 903 (7th Cir. 1984) In this case, a comparison of the two designs reveals a number of  
24 near-identical elements, with a few small flourishes added to the infringing design in  
25 a transparent attempt to evade detection for copyright infringement. The Unicolors  
26 design is clearly a misappropriation. This Motion must be granted.



**C. Plaintiff Has Established the Requisite Substantial Similarity to Support the Granting of This Motion.**

Plaintiff has conclusively established that the design on the infringing garments is, at the very least, substantially similar to Plaintiff's design. In reviewing textile designs, if an "average lay observer would recognize the alleged copy as being appropriated from the copyrighted work, then that constitutes substantial similarity." Lida v. Texollini, 768 F. Supp. 439 (S.D.N.Y. 1991), 1991 U.S. Dist. LEXIS 9680 \*\*8, (citing Novelty Textile Mills, Inc., v. Joan Fabrics Corp., 558 F.2d 1090, 1093, 195 U.S.P.Q. (BNA) 1 (2<sup>nd</sup> Cir. 1977), (quoting Ideal Toy Corp. v. Fab-Lu, Ltd., 360 F.2d 1021, 1022, 149 U.S.P.Q. (BNA) 800 (2d Cir.1966)). Clearly, given the striking similarity between the two works at issue, this standard of review can support only a finding of substantial similarity.

In addition, when comparing two works of visual art, the Court "looks to the similarity of the objective details in appearance" Cavalier v. Random House, 297 F.3d 815, 824 (9th Cir. 2002), citing McCulloch v. Albert E. Price, Inc., 823 F.2d 316, 319 (9<sup>th</sup> Cir. 1987); which quotes Litchfield 736 F.2d at 1356<sup>3</sup>. The objective details of each of the works, as compared in Exhibit Five to the Plaintiff's Motion, also provide compelling evidence that justiciable similarity has been established.

In contrast, Defendants offer no evidence to rebut what will certainly be obvious to this Court - that the total look and feel of the designs are similar, certain elements of the designs are identical, and the minor alterations to the infringing design are clearly attempts to doctor the Subject Design to evade liability for infringement.

Defendants' substantial similarity analysis does not address the merits of this comparison, but instead inexplicably argues that Ms. Choi, an employee of L.A.

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<sup>3</sup> "In Litchfield we stated that the similarity of ideas prong may be shown by focusing on the similarities in the objective details of the works. Concluding that the [graphic designs on the plates] are 'confusing similar in appearance' is tantamount to finding substantial similarities in the objective details of the [graphic designs on the plates]." Id.

1 Printex, could not have created the Subject Design because “he [sic] is not designated  
 2 as such in LAP’s Certificate of Registration.” [Defendants’ Opposition, at 11:21-22].  
 3 This argument, besides being false, is without import because it is clear from the  
 4 certificate that L.A. Printex is designated as the author, which is proper since the  
 5 Subject Design was created by an L.A. Printex employee.

6 Defendants then attempt to manufacture confusion in regard to whether or not  
 7 Plaintiff’s Exhibit Four is an actual copy of the Target garment, as it indicates in the  
 8 instant Motion and the Declarations supporting said. Of course, they do not state that  
 9 the garment in Plaintiff’s Exhibit Four is not the Target garment, and don’t do so  
 10 because they can’t do so without engaging in additional mis-statements and perjury.  
 11 Exhibit Four simply is the Target garment, and Defendants challenge as to this fact  
 12 appears to be nothing more than a function of a want of actual dispute.

13 While the Opposition is long on misguided arguments about technical and  
 14 procedural defects with Plaintiff’s submission of substantial evidence of  
 15 infringement, it is short on analysis in regard to substantial similarity. In fact, there is  
 16 no argument that the designs are not substantially similar. Indeed, even Unicolors  
 17 owner and person most knowledgeable regarding designs testified at deposition that  
 18 the infringing design “looks very similar” to the Subject Design. [See Exhibit C,  
 19 Deposition of Pazirandeh 95:10] This individual further testified that if he knew the  
 20 Subject Design was owned by another company, and one of his designers approached  
 21 him with the Dorim design, he “would absolutely drop this one and get a new  
 22 design.” [4See Exhibit C, Deposition of Pazirandeh 95:19-20].

23 \_\_\_\_\_  
 24 <sup>4</sup> Plaintiff is aware that Pazirandeh has tacked a paragraph on to the end of the Declaration  
 25 in which he states that, for unexplained reasons, he now finds the designs “totally different.” This  
 26 statement is self-serving and clearly contradicted by all evidence on record. It is black-letter law  
 27 that Courts can disregard Declarations submitted at the summary judgment stage if said  
 28 Declarations are self-serving and lack facial veracity. Stitt v. Williams, 919 F.2d 516, 523-524 (9th  
 Cir. 1990)(disregarding a submitted Declaration that was “highly improbable, given the factual

1 The owner of Unicolors has conceded that substantial similarity exists. This  
 2 concession, in conjunction with the lower standard of similarity required in situations  
 3 of strong access (which applies here), and the striking similarity between the two  
 4 designs, removes any doubt that Plaintiff has established this element of its claim.  
 5 Three Boys Music Corp., 212 F.3d at 485.

6 **D. Plaintiff Has Established Willfulness as to Defendants Unicolors and**  
 7 **Target Corp.**

8 Defendants Unicolors and Target were each willful in their infringement of the  
 9 Subject Design. Plaintiff has met its burden in showing access and knowing  
 10 misappropriation by Unicolors, as well as showing notice to, and continued sales by,  
 11 Target. All evidence supports a finding of willfulness as to these parties. No evidence  
 12 has been produced in contravention of these assertions and evidence.

13  
 14 context). If a statement is clearly implausible and made only for self-serving purposes, this party  
 15 must come forward “with more persuasive evidence than would otherwise be necessary to show  
 16 that there is a genuine issue for trial.” Id. The Court can also preclude the admission of Declarations  
 17 when they are contradicted by other forms of undisputed evidence. Kennedy v. Applause, Inc. 90  
 18 F.3d 1477, 1481 (9<sup>th</sup> Cir. 1996); See also Southern Pacific Co. v. Matthews, 335 F.2d 924 (5<sup>th</sup>  
 19 Cir.1964) (reversing judgment because it was supported only by his self-serving testimony which  
 20 was contradicted by other testimony and evidence), cert. denied, 379 U.S. 970, 85 S. Ct. 668, 13 L.  
 21 Ed. 2d 562 (1965). Finally, **“a court may disregard a ‘sham’ affidavit that a party files to create  
 22 an issue of fact by contradicting the party's prior deposition testimony.”** (emphasis added)  
 23 Leslie v. Grupo ICA, 198 F.3d 1152, 1157 (9<sup>th</sup> Cir. 1999), citing Kennedy v. Allied Mut. Ins. Co.,  
 24 952 F.2d 262, 266 (9<sup>th</sup> Cir. 1991) (“[I]f a party who has been examined at length on deposition  
 25 could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony,  
 26 this would greatly diminish the utility of summary judgment as a procedure for screening out sham  
 27 issues of fact.”). As such, to the extent the Declaration creates any issue of fact, which it can’t  
 28 because it reflects only the opinion of an interested party, it should be disregarded.

1 As set in the moving papers, and above, Unicolors purchased thousands of  
2 yards of fabric bearing the Subject Design from Plaintiff, and then, after making  
3 slight modifications to hide its piracy, it knocked off the fabric in Korea. This is  
4 clear-cut willful infringement.

5 Similarly, Target has not disputed that it sold infringing garments beyond  
6 receipt of the cease and desist demand. It has not even disputed, by Declaration or  
7 other evidence, that it received the cease and desist demand (which Plaintiff has  
8 declared was sent on the date of the letter, which letter was attached as an Exhibit to  
9 Plaintiff's Motion). Its only allegation was that the certified mail receipt was not  
10 attached as an Exhibit. It was not attached because there was no dispute as to whether  
11 or not the letter was received.

12 While Target has declined to submit testimony that it did not receive the cease  
13 and desist demand, counsel for Target, however, has submitted a false Declaration  
14 denying "that such a letter was ever received by Target" [See Decl. of Garcia ¶9].  
15 This Declaration is false because Plaintiff has submitted for this Court's review the  
16 cease and desist demand, as well as a Declaration from a Plaintiff representative  
17 attesting that the letter was sent to Target. No Declaration to the contrary has been  
18 provided by Target. Now, in response to the assertions that the letter was not received  
19 by Target, and as further evidence that the letter was sent, Plaintiff has attached  
20 hereto as Exhibit A a true and correct copy of the certified mail receipt for the cease  
21 and desist demand sent to Target in connection with the transactions at issue in this  
22 case. Target, despite receiving this letter, refused to cease and desist in its sales of the  
23 infringing garments. This renders Target willful.

24 Finally, Defendants attempt to create an issue in regard to Exhibit Six, which  
25 depicts evidence that Target continued to sell infringing garments for months after  
26 being put on notice that such sales constituted infringement. Initially, it is not "blank"  
27 as claimed in the Opposition. It shows that the period of sales continued until March  
28

2006, three months after the cease and desist was issued. Second, the remainder of the document has been redacted under a protective order, but Plaintiff is willing and ready to submit the un-redacted document for an in-camera review (if necessary).

**II. ALL PARTIES WHICH HAVE PURCHASED, SOLD, & DISTRIBUTED INFRINGING GARMENTS ARE LIABLE FOR SUCH PURCHASE, SALES & DISTRIBUTION**

Given that Plaintiff has established that the Unicolors fabric was illegally created, all parties that trafficked in goods created from this fabric are liable for copyright infringement under 17 U.S.C. 501(b) due to their violation of Plaintiff's rights through their respective importation, purchase, sale, and distribution of the infringing goods. As such, Plaintiff requests that liability for copyright infringement against all parties be entered in connection with this Motion.

**III. PLAINTIFF HAS ESTABLISHED THAT NO GENUINE MATERIAL DISPUTE EXISTS; THUS, THIS MOTION MUST BE GRANTED**

As established by Plaintiff's moving papers, the foregoing, and all other documents and evidence on file in this action, no triable issue of material fact exists and this matter is suitable for summary adjudication. As such, Plaintiff requests that this Court GRANT its Motion and enter summary judgment as to the liability of all defendants, and enter summary judgment as to a finding of willfulness as to Unicolors, Inc. and Target Corp.

Respectfully submitted,

Dated: April 2, 2008

By: /S/ Scott A. Burroughs  
Scott A. Burroughs, Esq.  
DONIGER LAW FIRM APC  
Attorneys for Plaintiff

**DECLARATION OF SCOTT A. BURROUGHS, ESQ.**

I, Scott A. Burroughs, Esq., declare, and state that if called as a witness I could and would competently testify as follows:

1. I am a shareholder in the DONIGER LAW FIRM, APC, attorneys for Plaintiff in this action.

2. I have attached hereto as Exhibit A a true and correct copy of the certified mail receipt for the cease and desist letter sent by Plaintiff to Target in connection with Target's sales of garments which infringe the Subject Design.

3. I have attached hereto as Exhibit B a true and correct copy of records reflecting Plaintiff's sales of product bearing the Subject Design. These sales constitute publishing under the Copyright Act.

4. I have attached hereto as Exhibit C true and correct pages from the Deposition of Nader Pazirandeh, which I personally conducted on January 30, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2<sup>nd</sup> Day of April, at Culver City, California.

By: /S/ Scott A. Burroughs  
SCOTT A. BURROUGHS  
Declarant

**DECLARATION OF MOON G. JUNG**

I, Moon G. Jung declare, and state that if called as a witness I could and would competently testify as follows:

1. I am an officer of L.A. Printex Industries, Inc. ("LAP") and am the custodian of LAP's files and records. I am personally familiar with the way LAP's business files and records are created, compiled, kept and archived. All matters contained herein are based upon my personal knowledge and experience or my personal review of LAP files and records. I certify and declare that each document attested to, or discussed, herein, each of which is hereby incorporated by reference, was removed from LAP records at my instruction and copied by me, or at my direction, and that each copy is a true and correct copy of the original as maintained and archived at the LAP facility.

2. The LAP files and records discussed, attested to, or referenced, herein are files and records that were created and maintained in the regular course of LAP business, at or near the time of such creation and maintenance, by individuals at LAP with knowledge of said files and records who had a duty to create and compile such files and records. I am personally familiar with said files and records and can thereupon certify and attest to their completeness and accuracy.

3. Based on my personal knowledge of LAP's files and records, Exhibit One to Plaintiff's Motion for Summary Adjudication is a true and correct copy of LAP's Design E50082 ("Subject Design"), which I understand to be the Design at issue in this case.

4. Based on my personal knowledge of LAP's files and records, Exhibit Two to Plaintiff's Motion for Summary Adjudication is a true and correct copy of the Copyright Registration for the Subject Design.

5. Based on my personal knowledge of LAP's files and records, Exhibit Three to Plaintiff's Motion for Summary Adjudication is a true and correct copy of LAP



1 Invoice No. 7132, which reflects a purchase by Unicolors, Inc. of \$12,890.15 worth  
2 of printing of the Subject Design on fabric. It clearly reflects that Unicolors, Inc.  
3 received fabric bearing the Subject Design.

4 6. Based on my personal knowledge of LAP's files and records, Exhibit Four to  
5 Plaintiff's Motion for Summary Adjudication is a true and correct copy of a garment  
6 found by LAP's investigators at a Target retail store.

7 7. Based on my personal knowledge of LAP's files and records, Exhibit A to  
8 Plaintiff's Reply in Support of its Motion for Summary Adjudication is a true and  
9 correct copy of the certified receipt for the cease and desist letter sent by Plaintiff to  
10 Target in connection with Target's sales of garments which infringe the Subject  
11 Design.

12 8. Based on my personal knowledge of LAP's files and records, Exhibit B to  
13 Plaintiff's Reply in Support of its Motion for Summary Adjudication is a true and  
14 correct copy of records reflecting Plaintiff's sales of product bearing the Subject  
15 Design. These sales constitute publishing under the Copyright Act.

16  
17 I declare under penalty of perjury under the laws of the State of California that  
18 the foregoing is true and correct. Executed this 2<sup>nd</sup> Day of April, at Vernon,  
19 California.

20  
21 By: \_\_\_\_\_  
22 MOON G. JUNG  
23 Declarant  
24  
25  
26  
27  
28